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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MARY C. McDEVITT and PADRAIC J.  
BRENNAN, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

QUALCOMM INCORPORATED, a Delaware  
corporation,

Defendant.

Case No.

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF:**

1. Section 2 of the Sherman Act, 15 U.S.C. § 2
2. Cartwright Act, Cal. Bus. & Prof. Code §§ 16700, *et. seq.*
3. Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

**JURY TRIAL DEMAND**

MARY C. McDEVITT and PADRAIC J. BRENNAN (“Plaintiffs”), on behalf of themselves and all others similarly situated (the “Class” as defined below), upon personal knowledge as to the facts pertaining to them and upon information and belief as to all other matters, bring this class action for damages, injunctive relief and other relief pursuant to federal antitrust laws and California antitrust, unfair competition, and consumer protection laws. Plaintiffs demand a trial by jury and allege as follows:

1       **I. NATURE OF THE ACTION**

2           1. Defendant QUALCOMM INCORPORATED (“Qualcomm”), as the largest  
3 provider of mobile chips in the world, holds a monopolistic position in the market. This action is  
4 brought against Qualcomm for abusing this monopoly and, as a result, causing millions of  
5 consumers worldwide to pay supracompetitive prices for cellular devices containing their modems  
6 chipsets.

7           2. Plaintiffs are purchasers of products that use cellular technology such as  
8 Qualcomm’s modem chipsets, including cellular telephones and computer tablets (“Cellular  
9 Devices”). Plaintiffs and the class of persons they seek to represent have been harmed by paying  
10 artificially inflated prices for the Cellular Devices they purchased. Qualcomm’s unlawful conduct  
11 has not been only contained in the United States. Indeed, Qualcomm’s anticompetitive conduct has  
12 been met with severe condemnation by regulators throughout the world.<sup>1</sup>

13           3. Essentially, Qualcomm has now “parlayed its pioneering role in cellular  
14 technology into a patent-licensing business that generates most of its profits. Qualcomm charges a  
15 royalty on nearly every smartphone made, whether or not the device uses its chips... [a]s a result,  
16 Qualcomm has reaped more than \$50 billion in licensing revenues since 2000” (emphasis added).<sup>2</sup>

17           4. Plaintiffs bring this action on behalf of themselves and others similarly situated  
18 to recover for their injuries resulting from Qualcomm’s violations of Section 2 of the Sherman  
19 Act, as well as violations of state antitrust and consumer protection laws, from January 17, 2013  
20 through the present (“Class Period”). Plaintiffs seek monetary damages, injunctive relief, and any  
21 other available remedies to which they are entitled for Qualcomm’s unlawful conduct.

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23  
24       <sup>1</sup> Just last month, the United States Federal Trade Commission (“FTC”) filed an action against  
25 Qualcomm in this court challenging Qualcomm’s abuse of their modem chipset market monopoly and  
26 alleging that Qualcomm has excluded competitors and harmed competition – resulting in increased  
prices paid by consumers of cellphones and tablets. *See Federal Trade Commission v. Qualcomm Inc.*,  
Case No. 17-cv-00220 (filed N.D. Cal. Jan. 17, 2017) (“FTC Complaint”).

27       <sup>2</sup> Don Clark’s “Qualcomm’s Main Profit Driver is Under Pressure,” by The Wall Street Journal (Apr. 13, 2015) at  
28 <https://www.wsj.com/articles/qualcomms-main-profit-driver-is-under-pressure-1428967051> (last accessed on  
February 20, 2017).

## II. PARTIES

### A. Plaintiffs

5. (a) Plaintiff MARY C. McDEVITT is a California resident who purchased an *Apple iPhone 6* and an *Apple iPhone 7*, each containing a Qualcomm modem chipset, which is similar to all *iPhone 6* and *iPhone 7* models subjected to having a Qualcomm modem chipset, during the respective Class Period for her own use and not for resale. Plaintiff has been injured in California and is threatened with further injury because she paid a higher price than she would have in the absence of Defendant's conduct as alleged herein.

(b) Plaintiff PADRAIC BRENNAN is a California resident who purchased an *iPhone 7 Plus* containing a Qualcomm modem chipset, which is similar to all *iPhone 7 Plus* models subjected to having a Qualcomm modem chipset, during the respective Class Period for his own use and not for resale. Plaintiff has been injured in California and is threatened with further injury because he paid a higher price than he would have in the absence of Defendant's conduct as alleged herein.

### B. Defendant

6. Defendant QUALCOMM INCORPORATED ("**Qualcomm**") is a Delaware corporation having its principal place of business at 5775 Morehouse Drive, San Diego, California 92121. Qualcomm is an American multinational semiconductor and telecommunications equipment company that designs and markets wireless telecommunications products and services. Qualcomm regularly conducts business in this district and many of its licensees are also located in this District.

## III. JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26), Section 1 of the Sherman Act (15 U.S.C. § 1), and 28 U.S.C. §§ 1331 and 1332(d) and 1367, in that: (i) this is a class action in which the matter or controversy exceeds the sum of \$5,000,000, exclusive of interest and costs, and in which some members of the proposed Class are citizens of a state different from some defendants; and (ii) Plaintiffs' state law claims

1 form part of the same case or controversy as their federal claims under Article III of the United  
2 States Constitution.

3 8. Venue is proper in this Court pursuant to Section 12 of the Clayton Act, 15  
4 U.S.C. §22 and 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiffs'  
5 claims occurred in this District, a substantial portion of the affected interstate trade and commerce  
6 discussed below has been carried out in this District, and Qualcomm transacts business and  
7 maintains facilities in this District and thus is subject to personal jurisdiction here. Qualcomm is  
8 engaged in interstate commerce, and its activities, including those activities that form the basis of  
9 this Complaint, substantially impact interstate commerce.

#### 10 **IV. INTRADISTRICT ASSIGNMENT**

11 9. Pursuant to the Northern District of California's Civil Local Rule 3-2(c) – (e),  
12 the intradistrict assignment should be to the San Jose division. This action arises in Santa Clara  
13 County because a substantial part of the events giving rise to these claims occurred in Santa Clara  
14 County. Qualcomm, as well as third parties including various OEMs, also have offices in San Jose,  
15 Santa Clara, or both. The FTC also filed a case in the San Jose Division concerning the practices at  
16 issue here. *Federal Trade Commission v. Qualcomm Inc.*, Case No. 17-cv-00220 (filed N.D. Cal.  
17 Jan. 17, 2017).

#### 18 **V. FACTUAL ALLEGATIONS**

##### 19 **A. Brief Overview of SSOs and SEPs**

20 10. The critical performance factors of an electronic product are interoperability and  
21 compatibility. In order for this to be accomplished, all Cellular Devices contain a modem chipset –  
22 the essential component that allows the device to effectively communicate and transmit voice and  
23 data across wireless networks such as Verizon or Sprint.

24 11. In the background, standard setting organizations (“SSOs”), comprised of device  
25 and device component developers as well as others, collaborate to set technology requirements to  
26 ensure mass interoperability amongst all system components. Since there are so many device  
27 designers, component manufacturers, and others involved in the process, every participant in the  
28

1 process must follow uniform standards to ensure the smooth transmission of data between the  
2 cellular network and the cellular devices that connect to it.

3 12. In setting these universal standards for parties to follow, SSOs declare patents  
4 that might be essential to those standards (“standard essential patents” or “SEPs”). SEP holders  
5 benefit by obtaining licensing fees and royalties associated with use of their technology – use of  
6 which is required in order for their cellular product to be interoperable.

7 13. Once incorporated and widely adopted, that technology is used not always  
8 because it is the best or the only option, but because the use of that technology has become  
9 necessary in order to comply with the agreed-upon standard. Therefore, SEP owners have  
10 tremendous power in that they have the ability to demand inflated royalties that, if abused, could  
11 severely limit competition, consumer choice, and innovation as a whole.

12 14. SSOs consider various alternative technologies before selecting a standard, and  
13 perhaps most importantly, SSOs also require that the developers of these standards agree to license  
14 their technology on fair, reasonable, and nondiscriminatory (“FRAND”) term as a condition of the  
15 inclusion of the patented technology into the standard.

16 15. FRAND terms ensure that competitors may use the SEP’s technology, and that  
17 device manufacturers may use the technology without being subjected to unilateral, unreasonable  
18 terms by the powerful SEP-holder. Indeed, SEP holders will often agree to FRAND terms because  
19 SSOs may exclude their technologies from the standard if they refuse to agree to FRAND terms.  
20 SEP holders also benefit from cooperating with the SSO through the license fees and royalties that  
21 flow in as a result of being the holder of an SEP implemented in a standard.

22 **B. Defendant Qualcomm’s Abuse of Its Monopolistic Power In The Wireless Industry.**

23 **1. Qualcomm Has Historically Maintained A Powerful Patent Portfolio in Mobile**  
24 **CDMA and LTE Technologies.**

25 16. Virtually all wireless companies have patent licenses with Qualcomm, and one of  
26 the most profitable and lucrative portions of Qualcomm’s patent portfolio is for CDMA technology  
27 (one of the main types of 2G and 3G standards).  
28

17. Additionally, Qualcomm holds numerous patents related to this standard. As a result, nearly any company that manufactures CDMA products—be they chipsets, phones, or infrastructure gear—must obtain a license from Qualcomm. Licensees pay a one-time fee to access Qualcomm’s patent portfolio, and then pay royalties calculated on the final product sold by the licensee (*e.g.*, a tablet).

18. Qualcomm also led the way when Fourth Generation wireless systems were introduced (“4G” or “LTE”) because Qualcomm exclusively supplies multimode CDMA-LTE chipsets that are backwards-compatible<sup>3</sup> with CDMA.

19. Lastly, proving to be ahead of the game again, Qualcomm is already beginning to create the foundation for the fifth generation wireless system (“5G”). States CEO Steve Mollenkopf: “While others have been talking about 5G, we have been creating it.”<sup>4</sup>

## 2. Qualcomm’s Violation of Its FRAND Promises.

20. In order to have their technology utilized in these standards, Qualcomm agreed to accept FRAND obligations – however, as numerous regulatory actions in countries around the world have confirmed<sup>5</sup>, Qualcomm has not kept its FRAND obligations. Instead, the corporation has taken advantage of standard-setting process to acquire and maintain monopoly control of the modem chipset market.

21. Beginning at least as early as 2008, Qualcomm – among other incidences:

a) refused to license (or alternatively imposed onerous restrictions on licenses of) its SEPs to competing chipset makers;

b) conditioned the supply of its CDMA chipsets on agreeing to Qualcomm’s entire patent portfolio’s license agreements;

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<sup>3</sup> Evolution of cellular communication does not simultaneously change communication standards at once because there are still users of handsets that use the old standard. It takes quite a bit of time to replace base stations and therefore, modem chipsets and handsets have to support not only new standards, but the old standards as well.

<sup>4</sup> Qualcomm’s website at <https://www.qualcomm.com/invention/5g>. Last accessed on February 20, 2017.

<sup>5</sup> See Complaint at Section V(C), *supra*.

1 c) entered into exclusive deals with certain cellular phone manufacturers  
2 such as Apple, Inc. (“Apple”); and

3 d) most egregiously, ignored the requirements of SSOs to license its  
4 SEPs to patent users on FRAND terms in order to successfully extract unreasonably high,  
5 unilaterally-determined royalty payments

6 22. Qualcomm fraudulently induced the SSOs to utilize its technology in the cellular  
7 technology standards relevant to this action with the promise that they would abide by FRAND  
8 commitments. These promises were deceitful and fraudulent – upon SSOs and consumers alike –  
9 and prices of cellular devices were artificially inflated as a result of Qualcomm’s unreasonable  
10 royalty demands.

11 23. Furthermore, with its power over CMDA technology, Qualcomm can and does  
12 use this as leverage to gain a greater share of the LTE-chipset market. Indeed, Qualcomm has  
13 leveraged its monopoly power over the supply of these chipsets to force device manufacturers into  
14 anticompetitive license agreements. Since these companies need CDMA- and LTE-based chipsets  
15 (which are controlled by Qualcomm) to be able to operate with CDMA- and LTE-based networks,  
16 device manufacturers have to accept unreasonable license terms as dictated by Qualcomm.

17 **3. Qualcomm’s Royalty Rates Are Much Higher Than Others’ Rates.**

18 24. Qualcomm’s royalty rates of 5% for most CDMA products and 3.25% for more  
19 recent LTE-based products are significantly higher than others in the industry – indeed, its royalty  
20 rate is easily double that of a number of their competitor’s rates.

21 25. Qualcomm’s basis for which it calculates its rates is manipulative because instead  
22 of basing its royalty rates on the value of its contributing technology, Qualcomm bases its rates off  
23 of the wholesale price of the end product in its entirety – which is not a reasonable basis for  
24 calculating SEP-based royalties.



1           26.       Indeed, certain SSOs have stated that a reasonable royalty should be the value  
2       attributable to a SEP. Therefore, it should be based on the value that the patented technology  
3       contributes to the “smallest salable component of the overall product.”<sup>6</sup>

4           27.       Qualcomm’s power in the modem chipset market allows it to unfairly leverage  
5       that power to force licensees to pay inflated rates on an unreasonable rate basis, which results in an  
6       increased royalty payment that has nothing to do with the actual value attributable to Defendants’  
7       technologies and intellectual property – to the harm of all end-users of mobile devices throughout  
8       the world.

9           C.       **Qualcomm’s Antimonopolistic Conduct Has Been Condemned By Regulators**  
10       **Throughout the World.**

11           28.       Qualcomm’s anticompetitive conduct has been met with severe condemnation  
12       and substantial fines by regulators around the world. In the last few years alone, Qualcomm’s  
13       royalty and licensing practices have been investigated by competition regulators in China, South  
14       Korea, Taiwan, Japan, Europe, and the United States.

15           29.       On February 9, 2015, Chinese authorities found Qualcomm’s conduct violated  
16       China’s Anti-Monopoly Law and imposed a record-breaking fine of \$975 million. Qualcomm was  
17       also ordered to reduce its royalty calculation by basing it off of a portion of the wholesale price of  
18       the device rather than the whole.

19           30.       In July of 2009, the Korea Fair Trade Commission (“KFTC”) fined Defendant  
20       Qualcomm US\$208 million for abusing its dominant share of the chipset market and the SEP  
21       license market, and ordered the company to end its unfair licensing practices with respect to the  
22       same. Incredulously, Qualcomm was undeterred, and in December 2016, after a three-year  
23       investigation, the KFTC issued a decision imposing a fine of US\$854 million against Defendant  
24       Qualcomm in its largest fine ever levied for limiting chip makers’ access to its patents, and for  
25       coercing mobile-phone manufacturers into unfair license agreements by refusing to supply crucial  
26       phone chips to those that disagreed with its terms.

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28       <sup>6</sup> “IEEE Amends its Patent (FRAND) Policy” by Dennis Crouch, PatentlyO (February 9, 2015) at  
      <http://patentlyo.com/patent/2015/02/amends-patent-policy.html>. Last accessed on February 6, 2017.



1           31. In December 2015, the Taiwan Fair Trade Commission (“TFTC”) began its  
2 investigation into whether Qualcomm’s licensing behavior violate the Taiwan Fair Trade Act and,  
3 among other things, whether Qualcomm’s royalty charges are unreasonable.

4           32. Most recently, as previously mentioned, the FTC filed an enforcement action in  
5 this Court seeking a permanent injunction against Defendant Qualcomm to undo and prevent its  
6 unfair methods of competition in or affecting commerce in violation of Section 5(a) of the Federal  
7 Trade Commission Act, 15 U.S.C. § 45(a). The FTC Complaint was filed on January 17, 2017,  
8 and alleged, among other things, that Qualcomm withheld its baseband processors unless a  
9 customer accepts a license to standard-essential patents on terms preferred by Qualcomm;  
10 continually refused to license its SEPs to its competitors, in direct violation of Qualcomm’s  
11 FRAND commitments; and entered into exclusive dealing arrangements with companies such as  
12 Apple Inc., which denied other baseband processor suppliers the benefits of working with a  
13 significant cell phone manufacturer and hampered their development into effective competitors.

14           **D. Plaintiffs and the Classes Were Injured by Qualcomm’s Monopolistic Conduct.**

15           33. Qualcomm’s unlawful conduct has directly resulted in harm to Plaintiffs and the  
16 Class in that hundreds of millions of unsuspecting members of the Classes paid higher prices for  
17 their Cellular Devices than they would have in the absence of Qualcomm’s monopolistic activity in  
18 an unregulated market.

19           34. Qualcomm and Plaintiffs are all participants in the Cellular Device market.  
20 Plaintiffs are consumers of such devices, and Qualcomm licenses the critical technology required to  
21 operate these Cellular Devices – and forces monopoly rents tied directly to the entire wholesale  
22 price of the Cellular Devices at issue in this litigation. Without the licenses by Qualcomm,  
23 Plaintiffs are unable to use the Cellular Devices at issue in this litigation. Therefore, Qualcomm’s  
24 anticompetitive acts directly increased the price of the Cellular Devices paid by Plaintiffs. Without  
25 the licenses by Qualcomm, Plaintiffs are unable to use the Cellular Devices at issue in this  
26 litigation.

27           35. The patent rights owned by Qualcomm are inextricably intertwined with the  
28 Cellular Devices themselves—and the effect of the anticompetitive conduct at issue in this case is

1 targeted at the Cellular Device as a whole and not components thereof – as reflected by  
 2 Qualcomm’s calculating of their royalty based off of the entire price of the Cellular Device as a  
 3 whole rather than simply the increase in value provided by their component piece.

4 36. As a result of Defendant’s unlawful behavior, Plaintiffs and members of the Class  
 5 have been forced to pay supra-competitive prices for Cellular Devices. Had Qualcomm not abused  
 6 its monopoly power and instead charged a fair and reasonable royalty as their FRAND  
 7 commitments called for, consumers throughout the world would have paid less for their Cellular  
 8 Devices.

#### 9 **VI. ANTITRUST INJURY**

10 37. Defendant’s unlawful abuse of its monopoly had the following effects, among  
 11 others: (1) price competition has been restrained or eliminated with respect to Cellular Devices; (2)  
 12 prices of Cellular Devices have been raised to artificially inflated levels; (3) purchasers of Cellular  
 13 Devices have been deprived of free and open competition; and (4) purchasers of Cellular Devices  
 14 – including Plaintiffs – paid artificially inflated prices.

15 38. During the Class Period, Plaintiffs and the Classes paid supra-competitive prices for  
 16 Cellular Devices. By reason of the alleged violations of the antitrust laws, Plaintiffs and the  
 17 Classes have sustained injury to their businesses or property, having paid higher prices for Cellular  
 18 Devices than they would have paid in the absence of Defendant’s conduct, and as a result have  
 19 suffered damages. This is precisely the type of antitrust injury that the antitrust laws were meant to  
 20 prevent and punish.

#### 21 **VII. MARKET DEFINITION**

22 39. The relevant geographic market for purposes for this action is the United States  
 23 and its territories. The relevant product markets are:

24 (a) the CDMA and premium LTE modem chipset markets (“Modem  
 25 Chipset Market”); and

26 (b) intellectual property rights associated with SEPs (“SEP Licensing  
 27 Market”).  
 28

1           40.     Qualcomm encumbers Cellular Devices through its licenses and related royalty  
2 fees, thereby directly participating in the market for the sale of Cellular Devices to Plaintiffs and  
3 Class Members.

4           **VIII. CLASS ACTION ALLEGATIONS**

5           41.     Plaintiffs bring this action on behalf of themselves and as a class action pursuant  
6 to Federal Rules of Civil Procedure (“Rules”) 23(a) and (b)(2), seeking damages, equitable and  
7 injunctive relief on behalf of the following class (the “Nationwide Class”):

8                   All persons and entities in the United States who purchased, paid  
9 and/or provided reimbursement for some or all of the purchase price  
10 for CDMA- and/or premium LTE cellular devices (“Relevant Cellular  
11 Devices”) for their own use and not for resale from January 17, 2013  
12 through the present. This class excludes: (a) Defendant, its officers,  
13 directors, management, employees, subsidiaries, and affiliates; (b) all  
14 federal and state governmental entities; and (c) any judges or justices  
15 involved in this action and any members of their immediate families  
16 or their staff.

17           42.     Alternatively to the claim for nationwide monetary relief under California law,  
18 Plaintiffs also bring this action on behalf of themselves and as a class action under Rule 23(a) and  
19 (b)(3) of the Federal Rules of Civil Procedure seeking damages or monetary relief pursuant to  
20 California state antitrust, unfair competition, and consumer protection laws on behalf of the  
21 following class (the “Damages Class”):

22                   All persons and entities in the United States who purchased, paid  
23 and/or provided reimbursement for some or all of the purchase price  
24 for CDMA- and/or premium LTE cellular devices (“Relevant Cellular  
25 Devices”) from January 17, 2013 through the present. This class  
26 excludes: (a) Defendant, its officers, directors, management,  
27 employees, subsidiaries, and affiliates; (b) all federal and state  
28 governmental entities except for those who have purchased Relevant  
Cellular Devices; (c) all persons or entities who purchased Relevant  
Cellular Devices for purposes of resale or directly from Defendant;  
(d) any judges or justices involved in this action and any members of  
their immediate families or their staff.

          43.     The Nationwide Class and the Damages Class are referred to herein as the  
“Classes.”

1           44. While Plaintiffs do not know the exact number of the members of the Classes,  
2 Plaintiffs logically believe there are millions of members in each Class given the sheer number of  
3 Cellular Device users in this day and age.

4           45. Common questions of law and fact exist as to all members of the Classes. Such  
5 questions of law and fact common to the Classes include (but are not limited to):

6                   (a) Whether Qualcomm willfully acquired or maintained monopoly power over  
7 the Cellular Device Components in the United States during the Class Period;

8                   (b) Whether Qualcomm possessed monopoly power in the Modem Chipset  
9 Market (underlying the Cellular Device Components) in the United States during the Class Period;

10                  (c) Whether Qualcomm attempted to possess monopoly power in the modem  
11 chipset market (a critical market underlying the Cellular Device Components) in the United States  
12 during the Class Period;

13                  (d) Whether Qualcomm possessed monopoly power in the SEP Licensing  
14 Market (for licenses critical to the technology underlying the Cellular Device Components) in the  
15 United States during the Class Period;

16                  (e) Whether Qualcomm tied the sale of its SEPs with the purchase of its non-  
17 SEPs;

18                  (f) Whether Qualcomm's acquisition and maintenance of its monopoly in the  
19 Cellular Device Components violated the Sherman Act, as alleged in the First Claim for Relief;

20                  (g) Whether Qualcomm's conduct violated California's Cartwright Act, Cal.  
21 Bus. & Prof. Code §§ 16700, *et seq.*, as alleged in the Second Claim for Relief;

22                  (h) Whether the conduct of Qualcomm, as alleged in this Complaint, caused  
23 injury to the business or property of Plaintiffs and the members of the Classes;

24                  (i) The effect of Qualcomm's unlawful conduct on the prices of Relevant  
25 Cellular Devices sold in the United States and its territories during the Class Period;

26                  (j) The appropriate damages, injunctive and related equitable relief for the  
27 Nationwide Class; and

28                  (k) The appropriate class-wide measure of damages for the Damages Class.

1           46.       Plaintiffs' claims are typical of the claims of the members of the Classes, and  
2 Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs and all members  
3 of the Classes are similarly affected by Qualcomm's wrongful conduct in that they paid  
4 supracompetitive prices for Cellular Device purchases.

5           47.       Plaintiffs' claims arise out of the same common course of conduct giving rise to  
6 the claims of the other members of the Classes. Plaintiffs' interests are coincident with, and not  
7 antagonistic to, those of the other members of the Classes. Plaintiffs are represented by counsel  
8 who are highly competent and experienced in the prosecution of antitrust and class action  
9 litigation.

10          48.       The questions of law and fact common to the members of the classes  
11 predominate over any questions affecting only individual members, including legal and factual  
12 issues relating to liability and damages.

13          49.       Class action treatment is the superior method for the fair and efficient  
14 adjudication of the controversy because such treatment will permit a large number of similarly  
15 situated persons to prosecute their common claims in a single forum simultaneously without the  
16 unnecessary duplication of evidence, effort, and expense that numerous individual actions would  
17 require. The benefits of proceeding through the class mechanism, including providing injured  
18 persons or entities with a method for obtaining redress for claims that it might not be practicable to  
19 pursue individually, substantially outweigh any difficulties that may arise in management of this  
20 class action. Indeed, the prosecution of separate actions by individual members of the Classes  
21 would create a risk of inconsistent or varying adjudications establishing incompatible standards of  
22 conduct for Defendant.

23       **IX. CLAIMS FOR RELIEF**

24                   **FIRST CLAIM FOR RELIEF**

25                   **Monopolization in Violation of Section 2 of the Sherman Act, 15 U.S.C. § 2**

26          50.       Plaintiffs reference all the above allegations as if fully set forth herein.  
27  
28

1           51. Qualcomm's conduct, as alleged herein, constitutes unlawful monopolization of  
2 the market for Cellular Device Components, in violation of Section 2 of the Sherman Act (15  
3 U.S.C. § 2).

4           52. Qualcomm has historically maintained monopoly power in the Modem Chipset  
5 Market. This is particularly significant because there are significant barriers to entry – giving  
6 competitors little to no chance to enter and compete to lower pricing against Defendant  
7 Qualcomm. Since Qualcomm controls the SEPs underlying CDMA technology and the market as a  
8 whole, Qualcomm has effectively to license to competitors and required purchasers of its chipsets  
9 to agree to its patent portfolio licenses. Qualcomm's terms are unreasonable and unlawfully violate  
10 its FRAND commitments at consumers' cost worldwide.

11           53. Qualcomm also holds a monopoly in the SEP Licensing Market. With SSOs  
12 implementing standards that utilize Qualcomm's technology – *and with no other substitutes*  
13 *available after a standard is chosen* – Qualcomm's chipsets have become critical for operability.

14           54. Having this market power over the SEP licensing market enables Qualcomm to  
15 leverage its control of its patents and force manufacturers to agree to unfair and unreasonable  
16 license agreements and terms – including excessive royalties.

17           55. Qualcomm has acquired and maintained its market power in the Cellular Device  
18 Components described above through anticompetitive means—among other things, excluding  
19 competitors and forcing manufacturers to agree to non-FRAND terms. Each relevant cellular  
20 device sold with or based on Qualcomm technology is also burdened by Qualcomm's exorbitant  
21 royalties – which in turn increases the cost of the device for consumers like Plaintiffs – and there is  
22 no procompetitive justification for the Qualcomm's anticompetitive conduct. Indeed, Qualcomm's  
23 acts have likely hindered the development of cellular technologies because it forced out  
24 competitors, innovation, and the possibility of competitive pricing.

25           56. In summary, Plaintiffs and the Class were harmed as a direct result of  
26 Qualcomm's conduct because it artificially increased the purchase price of their Relevant Cellular  
27 Devices.  
28

**SECOND CLAIM FOR RELIEF**

**Violations of the Cartwright Act; Cal. Bus. & Prof. Code §§ 16700, *et seq.***

57. Plaintiffs reference all the above allegations as if fully set forth herein.

58. During the Class Period, Qualcomm engaged in monopolistic and anticompetitive conduct in unreasonable restraint of trade and commerce and in violation of California Business and Professions Code sections 16700, *et seq.* Despite its FRAND obligations, Qualcomm imposed royalty rates that were unreasonable and exceeded what it could have obtained in a true FRAND negotiation. This conduct constitutes a “combination” under the Cartwright Act.

59. Qualcomm established and carried out an unlawful scheme by which it acquired and maintained monopoly power in the modem chipset market and SEP licensing market through anticompetitive means, including by excluding competition.

60. The Relevant Cellular Devices at issue are commodities.

61. As a direct result of Qualcomm’s unlawful conduct, Plaintiffs and the Class were overcharged when they purchased their Relevant Cellular Devices.

62. It is appropriate to apply California antitrust law to the Nationwide Class because Qualcomm is headquartered in California and Qualcomm subjected its competitors as well as manufacturers that reside and do business in California to its unlawful conduct. As a direct result, a large portion of Qualcomm’s profits were derived from companies doing business in California.

**THIRD CLAIM FOR RELIEF**

**Violations of Unfair Competition Law; Cal. Bus. & Prof. Code §§ 17200, *et seq.***

63. Plaintiffs reference all the above allegations as if fully set forth herein.

64. Qualcomm’s conduct constitutes a violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, which protects consumers from illegal, fraudulent and unfair business practices.

65. Plaintiffs bring this claim on behalf of themselves, the Damages Class, and on behalf of the public as private attorneys general pursuant to Cal. Bus. & Prof. Code § 17204.



1 Qualcomm's conduct constitutes violations of the Sherman Act and the Cartwright Act and  
2 therefore, constitute unlawful conduct under § 17200.

3 66. Qualcomm unlawfully acquired and maintained its monopoly over the Modem  
4 Chipset Market and SEP Licensing Market through anticompetitive conduct. Some examples  
5 include excluding competitors by refusing to license its technology to them; engaging in exclusive  
6 dealing arrangements with its customers to prevent other manufacturers from competing; and  
7 forcing manufacturers to license Qualcomm's entire patent portfolio for access to standard  
8 technology.

9 67. Qualcomm's conduct was deceptive because it induced SSOs to use its  
10 technology under the guise that it would comply with its FRAND obligations. However, after  
11 SSOs chose Qualcomm's technology to be implemented for their standards, Qualcomm broke its  
12 FRAND promises.

13 68. Qualcomm's conduct is unfair to Plaintiffs and members of the class because as  
14 a direct result of its acts described above, Plaintiffs were charged more for their Relevant Cellular  
15 Devices than they would have been but for Qualcomm's conduct.

16 69. Plaintiffs and the Class seek all forms of relief available under California's  
17 Unfair Competition Law. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiffs and the Damages  
18 Class seek from Qualcomm restitution and the disgorgement of all earnings, profits, compensation,  
19 benefits and other ill-gotten gains obtained by Qualcomm as a result of its conduct in violation of  
20 Business & Professions Code § 17200 *et seq.*

21 70. It is appropriate to apply California antitrust law to the Nationwide Class  
22 because (1) Qualcomm is headquartered in California and (2) Qualcomm subjected its competitors  
23 (as well as handset companies) that reside in California to its unlawful conduct. As mentioned  
24 previously, this allowed Qualcomm to collect a large portion of its profits from companies doing  
25 business in California.

26 71. Pursuant to Business & Professions Code § 17204, Plaintiffs and the Damages  
27 Class seek an order of this Court enjoining Qualcomm from continuing to engage in the acts as set  
28 forth in this Complaint, which acts constitute violations of Business & Professions Code § 17200

1 *et seq.* Plaintiffs, the Class and the public will be irreparably harmed if such an order is not  
2 granted.

3 **X. REQUEST FOR RELIEF**

4 WHEREFORE, Plaintiffs respectfully request that:

5 1. The Court determine that this action may be maintained as a class action under  
6 Rule 23(a), (b)(2), and (b)(3) and direct that reasonable notice of this action, as provided by Rule  
7 23(c)(2), be given to each and every member of the Class;

8 2. The unlawful conduct, conspiracy or combination alleged herein be adjudged  
9 and decreed an unreasonable restraint of trade or commerce in violation of Section 2 of the  
10 Sherman Act, and the state antitrust and consumer protection laws set forth herein;

11 3. Plaintiffs and members of the Damages Class recover damages, to the maximum  
12 extent allowed under such laws, and that a joint and several judgment in favor of Plaintiffs and the  
13 members of the Damages Classes be entered against defendants in an amount to be trebled to the  
14 extent such laws permit;

15 4. Plaintiffs and members of the Damages Class recover damages, to the maximum  
16 extent allowed by such laws, in the form of restitution and/or disgorgement of profits unlawfully  
17 gained from them;

18 5. Defendants, their affiliates, successors, transferees, assignees and other officers,  
19 directors, partners, agents and employees thereof, and all other persons acting or claiming to act on  
20 their behalf or in concert with them, be permanently enjoined and restrained from in any manner  
21 continuing, maintaining or renewing the conduct, conspiracy, or combination alleged herein, or  
22 from entering into any other conspiracy or combination having a similar purpose or effect, and  
23 from adopting or following any practice, plan, program, or device having a similar purpose or  
24 effect;

25 6. Plaintiffs and members of the Damages Class be awarded restitution, including  
26 disgorgement of profits defendants obtained as a result of their acts of unfair competition;  
27  
28

1           7. Plaintiffs and members of the Classes be awarded pre- and post-judgment  
2 interest as provided by law, and that such interest be awarded at the highest legal rate from and  
3 after the date of service of this Complaint;

4           8. Plaintiffs and members of the Classes recover their costs of suit, including  
5 reasonable attorneys' fees, as provided by law; and

6           9. Plaintiffs and members of the Classes have such other and further relief as the  
7 case may require and the Court may deem just and proper.

8 DATED: March 7, 2017

9 HALLISEY AND JOHNSON, P.C.

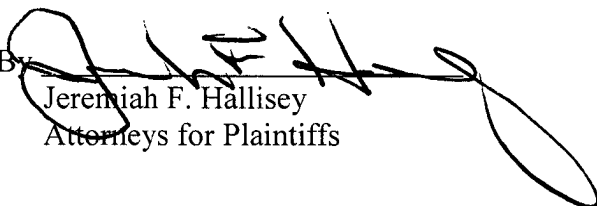
10  
11 By   
12 Jeremiah F. Hallisey  
13 Attorneys for Plaintiffs

14  
15 **JURY DEMAND**

16 Pursuant to Federal Rule of Civil Procedure 38(b), Indirect Purchaser Plaintiffs demand  
17 a jury trial of all issues so triable.

18  
19 DATED: March 7, 2017

20 HALLISEY AND JOHNSON, P.C.

21  
22 By   
23 Jeremiah F. Hallisey  
24 Attorneys for Plaintiffs